92-183

Supreme Court, U.S.
FILED
JUL 27 1992
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

AMY KNAPP,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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QUESTION PRESENTED FOR REVIEW

Does the Fifth Amendment in the Bill of Rights saying

> *". . . nor shall private property be taken for public use without just compensation"*

prohibit governmental expropriation of private property for governmental use without paying for it?

CERTIFICATE OF INTERESTED PERSONS AND PARTIES TO THE PROCEEDING

Petitioner: **Amy Knapp**, Petitioner and certified owner of the 1985 Dodge Ram Pickup, the 1981 Lincoln Towncar, and the Ford Housecar;*

Respondent: **United States of America.**

Possible Additional Parties having Interest

At the time of preparation of this Petition, the Supreme Court has granted certiorari to consider the decision of the Eleventh Court of Appeals in a case styled

United States of America, Respondent,
v.
One Single Family Residence
Located at 6960 Miraflores Avenue, Coral Gables, Florida

No. 90-5295 in the Eleventh Circuit.

This Court has accepted jurisdiction, and the style of that pending case is

REPUBLIC NATIONAL BANK OF MIAMI, Petitioner
v.
UNITED STATES OF AMERICA, Respondent

No. 91-767 in this Supreme Court.

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*Petitioner requests oral argument. Those items of property have been the nominal "defendants."

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

AMY KNAPP,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Amy Knapp petitions for a writ of certiorari and requests this Court to grant the petition, to vacate judgment of the Court of Appeals, and to order that court to reinstate Knapp's appeal.

REFERENCE TO OPINIONS BELOW

The denial of Petitioner's Suggestion for Rehearing En Banc from the Fifth Circuit Court of Appeals numbered 91-1892 was entered on April 27, 1992, and is reproduced as Appendix A to this Petition. The per curium opinion of the court of appeals, numbered 91-1892, entered on March 27, 1992, is reproduced as Appendix B to this Petition. The Memorandum Opinion and Order, in cause CA4-89-710A, of the United States District Court, Northern District of Texas is reproduced as Appendix C. The amended Judgment signed

July 16, 1991, numbered CA4-89-710A, is reproduced as Appendix D.

JURISDICTION

The Court of Appeals in an unpublished opinion dated March 27, 1992 affirmed the district court's judgment of forfeiture. Petitioner's Suggestion for Rehearing was denied on April 27, 1992. This petition is brought in a timely manner pursuant to Rule 13, Rules of the Supreme Court of the United States, and this Court's jurisdiction is invoked under 28 U.S.C. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Petition claims the guaranties of the Fifth Amendment of the United States Constitution, which provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; *nor shall private property be taken for public use without just compensation*." (Emphasis added).

STATEMENT OF THE CASE

On February 15, 1989, AMY KNAPP was the registered owner of the three motor vehicles seized by the Texas authorities in connection with the arrest of one Paul Coats. The government claims that the vehicles were used by Paul Coats for possession and distribution of marihuana. The government must concede that Amy Knapp is innocent of any criminal act. The vehicles were parked and stored on property owned by

Paul Coats, her former husband from whom she was divorced, and who lived at 4949 Melody Lane in Fort Worth, Texas.

On February 15, 1989, Paul Coats was arrested at his home by Fort Worth Police officers and charged with possession of marihuana. A substantial amount of property was seized by the Fort Worth Police, both at Coats' residence and at other nearby lots. The property seized by police included the following specific property which is the subject *in rem* of this proceedings:

a) The 1985 Dodge Ram Pickup.
b) The 1983 Ford Housecar.
c) The 1981 Lincoln Towncar.

After seizure the Texas police delivered the vehicles to federal DEA agents for forfeiture, probably because the federal forfeiture statutes were more stringent than were the Texas forfeiture statutes. No federal criminal charges were filed. Paul Coats was convicted in the Texas court for possession of marijuana.

The federal agents divided the seized property into two parcels. The DEA notified Paul Coats of its intended forfeiture of one parcel. The DEA notified Amy Knapp of its intended forfeiture of the second parcel consisting of these vehicles. The first parcel of property claimed by Paul Coats was forfeited in the trial court [U.S. district court, Ft. Worth, No. 4-89-467-E] and affirmed by the appellate court [Fifth Court of Appeals, No. 89-7076]. The reasons given by the courts were that Paul Coats had not sworn to his claim of ownership as required by the Admiralty Rules, and Paul Coats had not properly stayed the district court's forfeiture judgment on his appeal. Both courts blindly refused to consider Paul Coats' claim that his property was taken by the government for public use without payment.

The second forfeiture case was filed on October 13, 1989 against the vehicles registered to Amy Knapp. Amy Knapp filed a sworn ownership claim on October 23, 1989, complaining that seizure of her property violated the Fifth Amend-

ment guarantee that her property would not be taken for public use without just compensation. In March, 1990, Amy Knapp's request for a jury trial was denied as not timely made. Fourteen months after her request for a jury, the district court granted a government request for permission to amend its forfeiture complaint, but it never reconsidered this claimant's request for a jury trial.

No court hearing was ever held, but the government took the deposition of Amy Knapp. The Government filed its motion for summary judgment in the district court, claiming that Amy Knapp has no standing to contest the seizure and confiscation. Amy Knapp filed her motion for summary judgment, contending that the government has no authority (standing) to take private property for public use without paying compensation; i.e., this is a constitutionally prohibited claim.

The district court granted the government's motion for summary judgment, upholding its contention that "bare legal title," even absent other claims, is insufficient to contest forfeiture, and that Knapp has no standing in court. The district court never discussed Amy Knapp's claim that the government's forfeiture action is constitutionally prohibited.

Amy Knapp appealed the expropriation to the Fifth Court of Appeals, where that court affirmed the district court's finding that Amy Knapp, though the registered owner, has no standing to oppose forfeiture. The Court of Appeals recited that Amy Knapp raised constitutional objections to this taking of her property for public use without payment, but it never answered nor discussed the constitutional question. Amy Knapp's petition for rehearing en banc was denied on April 27, 1992. This Knapp case was determined without trial in the district court, and without oral submission in the court of appeals.

REASONS FOR GRANTING THE WRIT

This Supreme Court has not construed the clear and unambiguous language of the Fifth Amendment prohibiting expropriation. In an early opinion the Supreme Court looked at constitutional limitations on federal forfeitures, and the court ticked off the guarantees of the Fifth Amendment, but blindly ignored that specific language which prohibits taking private property for public use without compensation. [See *Miller's Ex'r. v. United States*, 78 U.S. (11 Wall.) 268, 20 L.Ed. 135, 144, involving forfeiture of property owned by a sympathetic supporter of the Confederacy.] The *Miller* Court approved the taking of private property for public use, but carelessly ignored the constitutional prohibition against governmental taking of private property for public use without payment.

Why does this judicial blind spot continue to permit the police to violate express constitutional prohibition, and encourage the government to seize more and more?

Does the constitutional provision requiring each member of the judiciary to take oath or affirmation to support the Constitution impose any duty?

If the power to expropriate private property is essential to effectively wage war on drugs or prevent criminal conduct, should the citizens remove this constitutional limitation precluding expropriation?

Should the courts vitiate the Constitution by refusing to enforce it?

ARGUMENT

The power of an autocratic government to expropriate private property without payment is essential to its existence. Power to forfeit, and the threat of such forfeitures is a powerful weapon to command loyalty and eliminate opposition.

> ". . . *It is certainly enough to warrant this belligerent right* [of confiscation] *that the owner be a resident of the*

> *enemy's country, no matter what his nationality. The whole doctrine of confiscation is built upon the foundation that it is an instrument of coercion, which by depriving an enemy of property within reach of his power, whether within his territory or without it, impairs his ability to resist the confiscating government, while at the same time it furnishes to that government means for carrying on the war . . .*"
>
> *Miller's Ex'r. v. U.S.*, 1871, 78 U.S. 268, 20 L.Ed. 135.

Before the American Colonists revolted they had found no relief from majestic seizures in the royal courts. With the Bill of Rights approved more than two hundred years ago, the citizens ordained that the government should not take private property for public use without paying for it. The power of expropriation is the power of coercion and oppression. If the last clause of the Fifth Amendment is enforced to mean what it clearly says, it shows that the citizens of this new republic in adopting the Bill of Rights on December 15, 1791, intended to limit the powers of their government by prohibiting it from confiscating private property without paying for it.

Almost 80 years later, the English government followed the American example, and with its Forfeitures Abolition Act of 1870 (33 & 34 Viet c. 23) abolished forfeitures as punishment for felonies.

It had been the practice of the feudal British monarchy to seize and expropriate property to itself, using the fiction of law that the property became evil and culpable because the owner had committed some criminal act. Thus began the common law pretense that the forfeiture was not against the owner, but rather against the property. The crown claimed the property for itself, and disallowed competing claims. The King could do no wrong. This *in rem* theory has been applied to take Amy Knapp's vehicles on the reasoning that the offending property belongs to the government. It is manifestly absurd that in order to deprive an owner of property,

the government must resort to a fairy tale that property has criminal intent.

An early decision of the Supreme Court discusses common law precedents for forfeiture. There is a dissent which would have protected the ownership of the innocent purchaser, and which criticizes the taking, and the legal fiction on which it was based. In his dissent, Justice Story wrote:

> *". . . I do not think much reliance can be placed upon analogies borrowed from the feudal tenures, because they were governed by peculiar and technical niceties, the reasons of which have long since ceased, and perhaps cannot now be well understood. . . . It seems to be a rule founded in common sense, as well as strict justice, that the fictions of law shall be used ut res magis valeat quam pereat (3 Rep., 28, b.), and this rule, so equitable in itself, seems recognized at common law. . . . For it has been repeatedly adjudged that relations [fictions of law] shall never work an injury, 'and shall never be strained to the prejudice of a third person who is not a privy or a party to the act;' and further, that 'in destruction of a lawful estate vested, the law will never make any fiction.' (3 Rep., 29; 2 Vent., 200.)*
>
> *U.S. v. 1600 Bags of Coffee*, 1814, 8 Cranch 398, 3 L.Ed. 602.

This forfeiture suit *in rem* against Amy Knapp's property was filed October 13, 1989, as authorized by *21 U.C.S. sec. 881(a)(4) et seq.*, which states in part:

- "(a) Subject property. The following shall be subject to forfeiture to the United States, and no property right shall exist in them.". . .

  "(e) Disposition of forfeited property. Whenever property is forfeited under this title the Attorney General may –

  "(1) retain the property for official use . . ."

The U.S. Constitution provides:

ARTICLE VI

"2. This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the Judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

"3. The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States shall be bound by oath or affirmation to support this Constitution; . . ."

Petitioner believes that the Supreme Court has never addressed the federal forfeiture statutes in the light of the last clause of the Fifth Amendment. There appears to be a line of federal decisions that seem to hold that the Fifth Amendment merely requires the government or utility to pay for that property for public use must acquire it by condemnation. That distinction seems illogical, for it reasons that the government must pay when it takes what it needs, but the government need not pay when it takes what it merely wants. If confiscation is prohibited by the Constitution, the government must not disobey the Constitution, just as the citizen must not disobey the law. The Constitution prohibits the government from profiting from crime.

One of the earliest opinions of the Supreme Court validating forfeiture is the case of *Miller's Ex'r. v. United States*, 1871, 78 U.S. (11 Wall.) 268, 20 L.Ed. 135, 144. In affirming the confiscation of property of a confederate resident, the court there said:

"If this were a correct assumption; if the Act of 1861 and the 5th, 6th, and 7th sections of the Act of July 17,

> *1862 were municipal regulations only, there would be force in the objections that Congress has disregarded the restrictions of the 5th and 6th amendments of the Constitution. Those restrictions, so far as material to the argument, are, that no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury; that no person shall be deprived of his property without due process of law, and that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed . . .*"

We must wonder why the Miller case failed to quote, or even recognize, that specific part of the Fifth Amendment which prohibits the taking of private property for public use without compensation.

Only a few years later the Supreme Court in *Dobbins Distillery v. United States*, 1877, 96 U.S. 395, 24 L.Ed. 637, affirmed another forfeiture and confiscation, again without considering the prohibition of the Fifth Amendment. There the court gave lip service to the absurd fiction that the confiscation was against the property, rather than against the owner, saying

> "*. . . it was the property and not the claimant that was put to trial under the pleadings . . .*"

A later case of the Supreme Court considering the constitutionality of expropriation statutes is the case of *Goldsmith, JR-Grant Co. v. United States*, 1921, 254 U.S. 505, 65 L.Ed. 376. There the Court in its factual summary acknowledged that:

> "*The [Grant] company pleaded against a condemnation and forfeiture of the car, the Constitution of the United States, especially Article Five of Amendments, which*

prohibits the deprivation of life, liberty, or property without due process of law . . .

The *Goldsmith* case affirmed the forfeiture, again failing to give effect to the constitutional prohibitions against confiscations, and disallowing even an innocent owner claim, relying on fictions:

". . . *Congress interposes the care and responsibility of their owners in aid of the prohibitions of the law and its punitive provisions, by ascribing to the property a certain personality, a power of complicity and guilt in the wrong. In such case, there is some analogy to the law of deodand, by which a personal chattel that was the immediate cause of death of any reasonable creature was forfeited . . .*"

One must question why the *Goldsmith* court searched so diligently into royal or medieval feudal law, but did not give effect to the clear and unambiguous language of the 5th Amendment. After it acknowledged that the owner pleaded his Fifth Amendment rights, the Court ignored the most applicable of such rights. The Court resorted to ascribing personality traits and human frailties to inanimate objects to defeat a constitutional claim.

With this supreme ordinance we call the Constitution, and the first ten Amendments we call the Bill of Rights, the people have commanded that their government must not expropriate and forfeit private property without compensation. Expropriation is always advantageous to the government, but coercive and oppressive to the citizens.

Our Constitution begins by saying, "We the people of the United States, . . . do ordain and establish this constitution for the United States of America." If the forfeiture statutes passed by Congress are in contravention of the people's will ordained in the Constitution, then the Constitution and the people's will must prevail. The Supreme Court has never

tested forfeiture statutes in the crucible of the constitutional prohibition.

Amy Knapp opposed the confiscation of her vehicles on constitutional grounds, and the district court ignored her claim. Amy Knapp appealed that denial and the court of appeals ignored her claim. She now asks this court to protect her from governmental expropriation. This case imposes on this Court the duty to protect her constitutional right, or tell her that she has none. She should be entitled to be heard.

When our nation and our Constitution were young, the U.S. Supreme Court recognized our Constitution as a people's limitation on the powers of oppressive government.

> *". . . That the people have an original right to establish, for their future government, such principles, as in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected . . .*
>
> *"This original and supreme will [The Constitution of the United States] organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments . . .*
>
> *"Those, then, who controvert the principle that the Constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.*
>
> *"This doctrine would subvert the very foundation of all written constitutions . . ."*
>
> *Marbury v. Madison*, 1803, 5 U.S. 137, 1 Cranch 137, 2 L.Ed. 60.

In writing the Constitution, the colonials began their statement of principles with the words, "We the people of the

United States . . . do ordain and establish this Constitution." The American colonials repudiated principles of feudal law which protected and strengthened the crown and the nobility, and oppressed the ordinary citizens. The authors of our Constitution specifically repudiated the monarchy and its feudal system by requiring that:

> *"No title of nobility shall be granted by the United States . . ."*
>
> *Article I, Section 9, Clause 8, United States Constitution.*

The precedent for governmental seizure of private property traces its origins through the feudal laws of England, where the royal courts piously approved anything the monarch wanted to do. Our first citizens of this democracy clearly, specifically, and unambiguously, with their Bill of Rights condemned expropriation and forfeiture.

Feudal monarchies continued as long as they were powerful enough to take what they wanted, and the only effective remedy against such autocratic oppression was revolt. Such principle is still true. Unrestrained government becomes more oppressive. Absolute power corrupts absolutely. To permit government to "break the law to enforce the law" is to invite oppression. If the Court denies Constitutional guarantees, even under the guise of "greater good," then the Courts are changing that which the people have said courts cannot change. With inspired wisdom, the Constitution prescribes the way in which it can be changed or amended. If the government is too powerful to be limited by a small part of the Constitution, then the government need not be obedient to any part of the Constitution, and our limited democracy has failed.

This Petitioner is aware of the reported cases in which the inferior federal courts uphold the practice of forfeiture of private property, and which refuse to give effect to the clear meaning of the Fifth Amendment.

> *"Finally, Redford claims that since the Fifth Amendment prohibits the government from taking private property without just compensation, the district court should have ordered the government to compensate him for the firearms it seized. However, it has long been settled that* ***if the government acts pursuant to a forfeiture statute, it may seize personal property without compensating the owner.*** [citing cases]"
>
> *Redford v. United States Department of Treasury, et al*, 1982, 10 Cir. 691 F.2d 471

That quoted case clearly relies only on the forfeiture statute, and does not consider the constitutional restriction. But *Marbury v. Madison, supra*, says that such practice would subvert the very foundation of all written constitutions. This Petitioner raises this point with the knowledge that the Courts have failed to construe the Fifth Amendment to mean what it clearly says. Have the courts developed a blind spot on this constitutional assurance to favor a strong government?

Our federal courts courageously repudiate the long accepted unfair denials of Constitutional rights. For many years, the Supreme Court announced and advocated the unreasonable fiction that "separate but equal" educational systems were the Constitutional equivalent of equal protection and due process. Our Constitution, and reason, ultimately prevailed to protect our citizens from prejudicial governmental abuse. See *Brown v. Board of Education of Topeka*, 347 U.S. 483, 98 L.Ed. 873 (1954).

The doctrine of stare decisis is a cornerstone in our system of justice, and it helps our courts and officers to predict the law applicable to a case not yet heard or determined. But it is wrong to use the doctrine of stare decisis to perpetuate an evil result, just as it is wrong to use a legal fiction to defeat a just result.

". . . The doctrine of stare decisis is evil, if it is used to perpetuate an evil result . . . We need only repeat what this

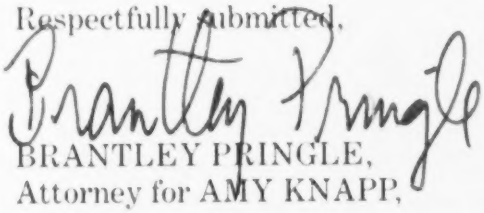
[Pennsylvania Supreme] Court has stated many times in the past:

> 'the doctrine of stare decisis is not a vehicle for perpetuating error but rather a legal concept which responds to the demands of justice and, thus, permits the orderly growth processes of the law to flourish.'
>
> "Stare decisis should not be invoked to preserve a rule of law when '(there is) no better reason for (it) than (that) it was laid down in the time of Henry IV. It is . . . revolting if the grounds upon which it was laid down have vanished long since, and the rule persists from blind imitation of the past.'
>
> *Mahle v. Pa. Dep't of Highways*, Pa. Sup. Ct., 1978, 388 A.2d 708.

CONCLUSION AND PRAYER

This Court should grant the petition for writ of certiorari, vacate the judgment below, and order the court of appeals to reinstate Knapp's appeal to consider whether this is a taking of private property for public use without payment of just compensation. In the alternative, this Court should dismiss this forfeiture action by the government as being a constitutionally prohibited claim to take private property for public use without compensation.

Respectfully submitted,



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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

AMY KNAPP,

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v.

UNITED STATES OF AMERICA,

Respondent

PROOF OF SERVICE

I, Brantley Pringle, do swear or declare that on this date, July 25, 1992, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached Petition for Writ of Certiorari on the United States Attorney, Marvin Collins, U.S. Courthouse, Fort Worth, Texas 76102.

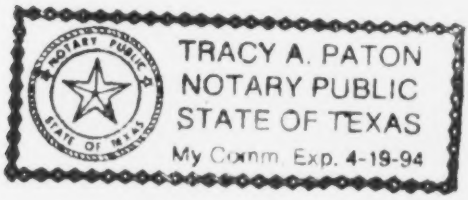
Brantley Pringle

BRANTLEY PRINGLE, Affiant

Subscribed and Sworn to Before Me this 25 day of July 1992.

Tracy A. Paton

Notary Public in and for Tarrant County, Texas



APPENDIX

[U.S. COURT OF APPEALS, FILED APR 27 1992,
GILBERT F. GANUCHEAU, CLERK]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-1892

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

FORFEITURE / 1985 DODGE RAM PICKUP,
etc., ET AL.,
Defendants,

AMY KNAPP, OWNER,
Claimant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas

ON SUGGESTION FOR REHEARING EN BANC

(Opinion 3/27/92, 5 Cir., 1992, ____ F.2d ____)
(April 27, 1992)

Before JOLLY, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:

(✓) Treating the suggestion for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the panel nor Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc (Federal Rules

REHG-8

[CLERK'S NOTE: SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.]

of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

( ) Treating the suggestion for rehearing en banc as a petition for panel rehearing, the petition for panel rehearing is DENIED. The judges in regular active service of this Court having been polled at the request of one of said judges and a majority of said judges not having voted in favor of it (Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ E. Grady Jolly
United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-1892
Summary Calendar

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

FORFEITURE / 1985 DODGE RAM PICKUP, etc., ET AL.,
Defendants,

AMY KNAPP, OWNER,
Claimant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(CA4 89 710 A)

(March 27, 1992)

Before JOLLY, DAVIS, and SMITH, Circuit Judges.

PER CURIAM*

Amy Knapp appeals the district court judgment that forfeits to the United States three motor vehicles she claims are her own. We affirm.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

I

On February 15, 1989, Paul Coats was arrested at 4949 Melody Lane, Fort Worth, Texas, after retrieving nine pounds of marihuana from the respondent Lincoln Continental Towncar for the purpose of selling it to an undercover officer. Also on February 15, the three respondent vehicles were seized from 4949 Melody Lane and 4901 Mobile Drive, Fort Worth. Coat's residence is 4949 Melody Lane and 4901 Mobile Drive is a vacant lot; Coats owned or controlled both locations. The police found a quantity of marihuana in each vehicle. The police also seized a boat and approximately $5,000 from Coats' person and clothes.

Coats informed the police on February 15 that his only legitimate income was $300 per month from Social Security and that he had been selling marihuana for five years. He advised that all the vehicles were paid for except the Corvette he had just purchased. In addition, he had paid off a $8,514 loan on the boat in five months. Coats had previous arrests for drugs in 1975 and 1986. Coats was indicted on state drug charges and pled guilty.

The three respondent vehicles involved in this litigation are a 1981 Lincoln Continental Towncar, a 1983 Ford Housecar, and a 1985 Dodge Ram Pickup. The titles of each of the vehicles show Amy Knapp as the owner. Her address is different on each title, one for the Melody Lane address, one for the Mobile Drive address, and one for a Boyd, Texas address. Knapp has never lived at either 4949 Melody Lane or 4901 Mobile Drive.

The Drug Enforcement Agency (DEA) began administrative forfeiture actions by sending notices of seizure on June 1, 1989, to Coats at 4949 Melody Lane. Notice of the intended forfeiture was also published on June 7, 14, 21, 1989, pursuant to 19 U.S.C. § 1607. A letter and cost bonds were sent to the DEA on June 27, 1989, stating that Knapp was the owner of the respondent vehicles and wished to challenge the forfeiture. Knapp was notified by letter on July 18, 1989, that her

claim was defective because it was not sworn to by Knapp or anyone authorized to act on her behalf. A sworn claim and cost bonds were submitted on August 16, 1989. The claim was sworn to by Coats.

After referral, the government filed a suit for forfeiture against the respondent vehicles on October 13, 1989. The complaint is verified by an affidavit stating probable cause for the seizure and forfeiture of the respondent vehicles. Knapp filed a verified claim and answer to the complaint on October 23, 1989, alleging ownership, denying that the vehicles were purchased with proceeds from drug transactions, and asserting that her constitutional rights were violated. The U.S. Marshal published the Order For Warrant of Arrest And For Notice on January 3, 10, and 17, 1990.

On March 13, 1990, Knapp requested a jury trial. This motion was struck because it was made several months after a timely jury demand could be made without leave of court. *See* Fed. R. Civ. P. 39(b). Knapp filed a motion for summary judgment on April 9, 1991. On April 25, 1991, the government moved to amend the complaint to correct the vehicle identification numbers and to update the address of Coats and Knapp. At this time, the government also filed a response to Knapp's motion for summary judgment and a cross-motion for summary judgment. Knapp did not respond to the government's cross-motion. The district court granted the government's motion to amend the complaint. On July 3, 1991, the district court granted summary judgment for the government, finding that the government's complaint was supported by unrebutted probable cause, Knapp had no more than bare legal standing to the respondent vehicles and, therefore, was without standing to challenge the forfeiture, and even if Knapp had standing, she failed to establish a defense to the forfeiture. A superseding judgment was entered on July 16, 1991, instructing the U.S. Marshal to deduct all taxable court expense from the sale of the respondent vehicles. The district court denied Knapp's motion for a stay.

II

Knapp raises three issues on appeal. First, she asserts that the forfeiture laws are in violation of the Fifth Amendment of the United States Constitution. Second, she contends that she was denied her right to a jury trial. Third, she argues that she was prejudiced by the delay in the commencement of the forfeiture action. Because we agree that she has no standing to challenge the forfeiture action, we affirm.

A

Summary judgment is appropriate when "there is no genuine issue of material fact and [] the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). We review a grant of summary judgment *de novo*. *See Lavespere v. Niagra Mach. & Tool Works, Inc.*, 910 F.2d 167, 177-78 (5th Cir. 1990).

This is a forfeiture proceeding brought pursuant to 21 U.S.C. §§ 881(a)(4) and (a)(6). Before the government is required to show probable cause for the forfeiture, the claimant must have standing to challenge the forfeiture. *United States v. $321,470 in U.S. Currency*, 874 F.2d 298, 302-04 (5th Cir. 1989). A claimant has the burden of establishing standing and must establish a defense to forfeiture by a preponderance of the evidence. *See Id.; United States v. Little Al*, 712 F.2d 133, 136 (5th Cir. 1983). Standing is shown by ownership or colorably lawful possessory interest in the property to be forfeited. *$321,470 in U.S. Currency*, 874 F.2d at 302-04. Bare legal title is not sufficient to establish standing by one who does not exercise dominion and control over the property. *United States v. One Parcel of Land, etc.*, 902 F.2d 1443, 1444 (9th Cir. 1990); *United States v. One 1978 Piper Navajo PA-31, Aircraft*, 748 F.2d 316, 319 (5th Cir. 1984). "'[P]eople engaged in illegal activities often attempt to disguise their interests in property by placing title in someone else's name'; therefore, 'courts look behind the formal title to determine whether the record owner is a "strawman" set up to conceal the financial

affairs or illegal dealings of someone else.'" *United States v. All That Lot of Land Known as 2511 E. Fairmont Ave.*, 722 F. Supp. 1273, 1279 (D. Md. 1989) (quoting *United States v. One 1977 36' Cigarette Ocean Racer*, 624 F. Supp. 290, 295 (S.D. Fla. 1985)).

The undisputed facts show that Knapp is only the bare legal title holder of the respondent vehicles. Because she does not exercise dominion and control over the vehicles, she has no standing to contest the forfeiture. Coats was the third of Knapp's six husbands and they were married for two years, 1958-1960. Knapp describes their relationship as "not like real close" but stated that they talked "every once in a while." Knapp asserts that the vehicles were given to her by Coats in 1986 and 1987. The title to the Ford Housecar, however, shows the assignment to Knapp in 1988 and the title to the Dodge Ram Pickup shows the assignment to Knapp in 1989. Knapp claims she has never lived at 4949 Melody Lane or 4901 Mobile Drive, two of the addresses on the titles.

Most enlightening, however, is Knapp's testimony regarding her dominion and control over the respondent vehicles. She claims to have driven the Lincoln Continental Towncar from the date Coats gave it to her in 1986 until 1987 when it was involved in an accident. Thereafter, Coats kept the Lincoln Towncar and Knapp does not know if he ever used it. Regarding the Ford Housecar, she was not present when Coats bought it, she never drove it, she never saw it, Coats always kept it, she had no keys to it, she never obtained insurance for it, and she does not know if Coats ever used it. Last, Knapp was present when Coats purchased the Dodge Ram Pickup, but she does not remember whether he paid for it in cash. She drove the Dodge Ram Pickup from the dealer's lot to where it was stored and never saw or drove it again. Again, she had no keys to the Dodge Ram Pickup, Coats always kept it, she never obtained insurance for it, and she does not know if Coats ever used it.

In addition to the respondent vehicles that Knapp "owned," she also owned and drove a Plymouth Reliant in 1986. When the Reliant was wrecked in 1988, she did not use one of the respondent vehicles but instead purchased a Dodge Shadow.

The district court correctly determined that Knapp had no standing to contest the forfeiture. She did not exercise any dominion and control over the respondent vehicles. As there were no other claimants before the district court, the judgment of forfeiture was proper. Because she lacks standing to challenge the forfeiture, Knapp also lacks standing to challenge the constitutionality of the forfeiture laws, to challenge the district court's denial of her motion for a jury trial, and to allege that the forfeiture action was not commenced and prosecuted without delay. *See United States v. $15,500 U.S. Currency*, 558 F.2d 1359, 1360-61 (9th Cir. 1977).

III

The judgment of the district court is

AFFIRMED.

[U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS.
FILED JUL 2 – 1991. NANCY DOHERTY, CLERK
BY D. DURON, DEPUTY]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Civil Action No. 4-89-710-A

UNITED STATES OF AMERICA,
Plaintiff

v.

1. ONE 1985 DODGE RAM PICKUP,
VIN 1B7FD14H8FS697323, ITS TOOLS, EQUIPMENT,
AND APPURTENANCES;

2. ONE 1983 FORD HOUSE CAR,
VIN 1FDHE30G4CHA02709, ITS TOOLS, EQUIPMENT,
AND APPURTENANCES; AND

3. ONE 1981 LINCOLN TOWNCAR,
VIN 1MRBP95F4BY662039, ITS TOOLS, EQUIPMENT,
AND APPURTENANCES,
Respondents In Rem.

MEMORANDUM OPINION AND ORDER

Came on to be considered (1) the motion of claimant, Amy Knapp ("Knapp"), for summary judgment, and (2) the cross-motion of plaintiff, United States of America ("government"), for summary judgment, filed on April 25, 1991, and to which

[Certified a true copy of an instrument on file in my office on 9-12-91
NANCY DOHERTY, Clerk, U.S. District Court, Northern District
of Texas
By Susan Weber Deputy]

[ENTERED ON DOCKET 7-3-91 PURSUANT TO F.R.C.P. RULES 58
AND 79a.]

there has been no response. Having considered the motions and all matters proper to be considered in connection therewith, the court has concluded, for the reasons stated below, that Knapp's motion is unmeritorious and should be denied, and that the government's motion should be granted.

This is a civil forfeiture action brought pursuant to 21 U.S.C. §§881(a)(4) & (6). Probable cause for seizure of the respondent vehicles and the tools, equipment and appurtenances thereto, existed by virtue of the following undisputed facts: On February 15, 1991 [sic 1989], Paul Coats ("Coats") was arrested at 4949 Melody Lane, Fort Worth, Texas, after retrieving nine pounds of marijuana from the respondent Lincoln Continental for the purpose of selling it to an undercover officer. At the same time, the respondent vehicles were seized from the locations of 4949 Melody Lane and 4901 Mobile Drive, Fort Worth, Texas, which were owned and controlled by Coats. Each of the respondent vehicles contained marijuana. Coats advised officers that he had been selling marijuana for approximately five years. Subsequently, on May 25, 1991 [sic 1989], Coats was indicted on state drug charges resulting from his February 15, 1991 [sic 1989], arrest and on June 20, 1989, he pled guilty to possession of more than five pounds but less than 50 pounds of marijuana.

The Drug Enforcement Administration ("DEA") began administrative forfeiture proceedings by sending notices of seizure on June 1, 1989, to Coats at 4949 Melody Lane, Fort Worth, Texas. Notice of intended forfeitures was also published on June 7, 14, and 21, 1989, pursuant to 19 U.S.C. § 1607. A letter and cost bonds were sent to the DEA on June 27, 1989, stating that Knapp was the owner of the respondent vehicles and wished to challenge the forfeiture. Knapp was notified by letter on July 18, 1989, that such a claim was defective because it was not sworn to by Knapp or anyone authorized to act on her behalf. Thereafter, on August 16, 1989, a sworn claim and cost bonds were submitted on Knapp's behalf. The claim was sworn to by Coats.

After referral, the government, filed a complaint for forfeiture against the respondent vehicles on October 13, 1989. The complaint is verified by an affidavit stating probable cause for the seizure and forfeiture of the respondent vehicles. Knapp filed a verified claim and answer to the complaint on October 23, 1989, alleging that she was the owner of the respondent vehicles; that such vehicles were not proceeds of or furnished in exchange for a controlled substance; that her constitutional rights were violated; and that the complaint for forfeiture is insufficient. On October 27, 1989, the court ordered the respondent vehicles arrested, and that any alleged claimant who is personally served with notice of the forfeiture action to file a claim within ten (10) days after such service. The court further ordered that any alleged claimant who is served by publication to file a claim within ten (10) days of the last date of publication. As evidenced by a United States Marshal's Process Receipts and Returns (Form 285) filed herein, the Marshal was unable to locate and personally serve either Knapp or Coats. Besides the claim filed by Knapp, no other claim to the respondent vehicles has been filed. As further evidenced by receipt filed on March 2, 1990, publication of the forfeiture was made on January 3, 10, and 17, 1990, pursuant to the court's January 22, 1991, order and Rule C(4) of the Supplemental Rules for Certain Admiralty and Maritime Claims.

Title 21 U.S.C. § 881(a)(4) and (6) provide in relevant part that:

> (a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:
>
> * * *
>
> (4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of [controlled substances in violation of this subchapter] . . . except that –

> (B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State; and
>
> (C) no conveyance shall be forfeited under this paragraph to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.
>
> * * *
>
> (6) All moneys, negotiable . . . or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys . . . used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

To secure forfeiture, the government must show probable cause for institution of the forfeiture action. 19 U.S.C. § 1615; *See also United States v. One 1975 Ford Pickup Truck*, 558 F.2d 755, 756 (5th Cir. 1977). Probable cause may be established by hearsay evidence. *United States v. 1964 Beechcraft Baron Aircraft*, 691 F.2d 725, 729 (5th Cir. 1982). Circumstantial evidence of drug transactions will also support the estab-

lishment of probable cause in a forfeiture action. *United States v. $5,644,540.00 in U.S. Currency*, 799 F.2d 1357, 1363 (9th Cir. 1986). An unrebutted showing of probable cause alone will support a forfeiture. *United States v. Little Al*, 712 F.2d 133, 136 (5th Cir. 1983).

As a predicate to contesting a forfeiture, a claimant must first establish standing, *i.e.*, an ownership or colorably lawful possessory interest in the property. *United States v. $321,470.00*, 874 F.2d 298, 303-04 (5th Cir. 1989); *United States v. One 18th Century Colombian Monstrance*, 797 F.2d 1370, 1374-75 (5th Cir. 1986), *cert. denied*, 481 U.S. 1014 (1987). The burden of establishing standing to contest a forfeiture is on the claimant seeking to come before the court. *United States v. One 1967 Chris Craft, 27 foot Fiber Glass Boat*, 423 F.2d 1293, 1294 (5th Cir. 1970). Bare legal title by one who does not exercise dominion and control over the property is insufficient to establish ownership for standing purposes. *United States v. One 1978 Piper Navajo PA-31, Aircraft*, 748 F.2d 316, 319 (5th Cir. 1984). Furthermore, a claimant must establish a defense to forfeiture by a preponderance of the evidence. *United States v. Little Al*, 712 F.2d 133, 136 (5th Cir. 1983); *United States v. A Single Family Residence*, 803 F.2d 625, 629 (11th Cir. 1986).

In the instant case, the government's complaint for forfeiture is supported by an affidavit establishing an unrebutted showing of probable cause. Futhermore, the record indicates that Knapp has no more than bare legal title to the respondent vehicles, and therefore, lacks standing to contest the forfeiture. Finally, assuming, *arguendo*, Knapp had standing, she has failed to carry her burden of establishing a defense to the forfeiture.

ORDER

For the reasons stated above, the court has concluded that Knapp's motion should be denied, that the government's motion should be granted, and that the government is entitled

to judgment in forfeiture as to Knapp and Coats and any other possible unknown claimants. A judgment consistent with this Memorandum Opinion and Order will be signed by the court this day.

The court, therefore, ORDERS that Knapp's motion be, and is hereby, denied.

The court further ORDERS that the government's motion be, and is hereby, granted, and that the government is entitled to judgment in forfeiture as to Knapp and Coats and any other unknown claimants.

It appearing that there are no other claimants having claim to the property at issue in this action, the court further ORDERS that the above-styled and numbered action be, and is hereby, dismissed in its entirety.

SIGNED June 29, 1991.

/s/ John McBryde
JOHN McBRYDE
United States District Judge

[U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS.
FILED JUL 16 – 1991, NANCY DOHERTY, CLERK
BY D. DURON, DEPUTY]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Civil Action No. 4-89-710-A

UNITED STATES OF AMERICA,
Plaintiff

v.

1. ONE 1985 DODGE RAM PICKUP, VIN 1B7FD14H8FS697323, ITS TOOLS, EQUIPMENT, AND APPURTENANCES;

2. ONE 1983 FORD HOUSE CAR, VIN 1FDHE30G4CHA02709, ITS TOOLS, EQUIPMENT, AND APPURTENANCES; AND

3. ONE 1981 LINCOLN TOWNCAR, VIN 1MRBP95F4BY662039, ITS TOOLS, EQUIPMENT, AND APPURTENANCES,
Respondents In Rem.

JUDGMENT

In accordance with the memorandum opinion and order signed by the court on June 29, 1991, and the order signed by the court this day,

The court ORDERS, ADJUDGES and DECREES that the motion of claimant, Amy Knapp ("Knapp"), for summary judgment be, and is hereby, denied.

[ENTERED ON DOCKET 7-16-91 PURSUANT TO F.R.C.P. RULES 58 AND 79a.]

The court further ORDERS, ADJUDGES and DECREES that the motion of plaintiff, United States of America for summary judgment be, and is hereby, granted.

The court further ORDERS, ADJUDGES and DECREES that all right, title, claim, and interest of any and all persons and parties in and to the respondent vehicles, the tools, equipment, and appurtenances thereto, are forfeited to the United States of America, and that such respondent property be, and is hereby, forfeited to the United States of America to be disposed of according to law.

The court further ORDERS, ADJUDGES and DECREES that the United States Marshal shall deduct all taxable court costs of this forfeiture action, including costs of storage of the respondent vehicles as authorized by 28 U.S.C. § 1921(a)(1)(E), costs for publication of notice as authorized by 28 U.S.C. § 1608, and costs for serving or endeavoring to serve process as authorized by 28 U.S.C. § 1921(a)(1)(E) & (G), from the claim and cost bonds filed by Knapp in the amounts of $600.00, $600.00, and $500.00, with the United States Drug Enforcement Administration pursuant to 19 U.S.C. § 1608, and return any remaining balance to Knapp through her attorney at the following address:

Brantley Pringle, Esq.
113 Houston Street
Fort Worth, Texas 76102

The court further ORDERS, ADJUDGES and DECREES that this Judgment supersedes the Judgment signed by the court on June 29, 1991.

SIGNED July 16, 1991.

/s/ John McBryde
JOHN McBRYDE
United States District Judge